IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 863 OF 2006

IN

NOTICE OF MOTION NO. 1147 OF 2006

IN

L.C. SUIT NO. 1245 OF 2006

Doodhnath Jagdamba Sharma ... Appellant

Vs.

The Mumbai Municipal Corporation for Greater Mumbai. ... Respondents

Mr. R.U.Singh for the appellant.

Mrs. Geeta Joglekar for B.M.C.

CORAM: A.M.KHANWILKAR,J.

DATE : 31st January,2007.

P.C.

1. Heard Counsel for the parties.

Admit.

2. Counsel for Respondents waives notice.

3. This Appeal from Order takes exception to the judgment and order passed by the City Civil Court,

Greater Mumbai, dated 20th November, 2006 in Notice of Motion No. 1147 of 2006. By that ordr, the lower Court dismissed the Notice of Motion taken out by the plaintiffs for interim relief. The lower Court has observed that the said Notice of Motion was misconceived. It also observed that plaintiff has not challenged the validity of the impugned notice dated 25th August, 2005 in the suit nor has produced any documents to the Corporation or in Court about the authenticity of the structure being in existence prior to the datum-line of 1962.

What has however, been overlooked by the trial Court is the fact that the Respondent-Corporation admits that the reply sent by the appellant to the show cause notice under Section 351 is still pending for decision before the Competent Authrity. So long as the Competent Authority does not pass any final order on the said reply, in law, it is not open to the Corporation to precipitate the matter or to demolish the suit structure on the basis of such notice. The fact that the plaintiff has not challenged the notice dated 25.8.2005 or for that matter, not produced any document before the Court is of no relevance to answer that issue. The relief claimed in the Notice of Motion under consideration was very limited which reads:-

> "(a) Pending the hearing and final disposal of the suit, this Hon’ble Court be pleased to

> restrain the defendant, their servants, agents, officers and representatives by an order of injunction from demolishing removing and or pulling down the suit premises i.e. structure No. PX-30 1/1 C admeasuring about 60 x 30 sq. ft. which is situated on the plot of land bearing Survey No.241 (part) C.T.S. No. 627 at Sharma Compound Santosh Nagar/Krishna Nagar, Film City Road/Gr. Arunkumar Vaidya Marg, Malad (E), Mumbai-400 097, any part thereof unless and until No. ACPN/BF. VI/351/3352 of 2005-2006 dated 25/08/2005 and reply fuiled thereto on 12/09/2005 is decided by the competent authority;"

It is not as if the plaintiff was asking for injunction during the pendency of the suit. All that the plaintiff prayed in this Notice of Motion is to protect any further action by the Authority until the reply filed by him was considered by the Competent Authority. In fact, it is the statutory protection available to the suit structure. Even after communication of the final decision of the Competent Authority, the structure cannot be straightaway demolished, but specified time is provided to the occupant to question the correctness of such decision before the appropriate forum.

4. Thus, the judgment under appeal is set aside and instead, the Notice of Motion No.1147 of 2006 is made

absolute in terms of prayer clause (a) which is reproduced hereinabove.

5. It is however clarified that all questions with regard to the claim of the plaintiff are left open to be decided by the Competent Authority on its own merits on the basis of material produced.

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(A.M.KHANWILKAR,J.)